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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/748,946

12/29/2003

Edward John Giblin

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7590

08/09/2006

UNILEVER INTELLECTUAL PROPERTY GROUP
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EXAMINER

PATTERSON, MARC A

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/748,946

Applicant(s)

GIBLIN ET AL.

Examiner

Marc A. Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 11, 14-16, 20, 21, 23, 27 and 28.

Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☒ Other: See attached.

ADVISORY ACTION

Applicant's arguments filed July 27, 2006 have been fully considered but have not been found to be persuasive.

1. Applicant argues, on page 2 of the remarks dated July 27, 2006, that Heydarpour et al lack any disclosure that the recycling of the disclosed bottle is used to form another bottle; the recycling Applicant argues, may be used to form a different article

However, the disclosure need not be limited to the disclosure of recycling to form a container; the disclosure that a bottle is recyclable clearly means that the pouch may be recycled into another bottle, having the same structure, even if the bottle may also be recycled to form a different article.

Applicant also argues on page 2 that Heydarpour et al fail to disclose a middle layer that comprise at least 25% by weight post consumer recycled resin.

However, as stated above, Heydarpour discloses a recycled bottle, and therefore comprises a middle layer comprising at least 25% by weight post consumer recycled resin.

Applicant also argues, on page 3, that the outer and inner layers of the claimed invention are each no thicker than 20% of the total wall thickness, leaving at least 60% of the wall thickness for the middle layer.

However, the middle layer must be at least 60% of the thickness only if the wall consists of the three layers; if the wall comprises three layers, the middle layer must be at least 60% of the thickness.

Applicant also argues on page 3 that the bottle of the claimed invention is transparent or translucent and has sufficient strength to handle rugged handling.

However, the bottle disclosed by Heydarpour et al comprises the structural limitations of the claimed invention, as stated in the previous Action, and therefore has the properties of the claimed invention, including being transparent or translucent and has sufficient strength to handle rugged handling.

Applicant also argues on page 3 that intuitively the skilled technician would be hesitant to incorporate any significant amount of recycled resin because the resin is not known to have any appreciable light transmittance.

However, no evidence has been provided which indicates that recycled resin has no light transmittance.

Applicant also argues, on page 4, that transparency or translucency are not achieved with the wrong type of polyethylene, and that recycled plastics are more than likely to contain the wrong type of polyethylene.

However, as stated above, no evidence has been provided which indicates that recycled resin has no light transmittance.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marc Patterson 2/7/06
Marc A. Patterson, PhD.
Primary Examiner
Art Unit 1772